

**NOT FOR PUBLICATION**

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

**FILED**

**DEC 13 2005**

CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS

JASWINDER SINGH,

Petitioner,

v.

ALBERTO R. GONZALES, Attorney  
General,

Respondent.

No. 04-72356

Agency No. A76-862-342

MEMORANDUM\*

On Petition for Review of an Order of the  
Board of Immigration Appeals

Submitted December 5, 2005\*\*

Before: GOODWIN, TASHIMA, and FISHER, Circuit Judges.

Jaswinder Singh, a native and citizen of India, petitions pro se for review of the Board of Immigration Appeals' summary affirmance of an immigration judge's ("IJ") order denying his motion to reopen removal proceedings conducted in

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\* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

\*\* The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

absentia. To the extent we have jurisdiction, it is conferred by 8 U.S.C. § 1252.

We review the denial of a motion to reopen for abuse of discretion. *See Celis-Castellano v. Ashcroft*, 298 F.3d 888, 890-91 (9th Cir. 2002). We deny in part, and dismiss in part, the petition for review.

The IJ properly exercised her discretion in denying Singh's motion to reopen his removal proceedings, filed over two and a half years after entry of the in absentia removal order, because Singh failed to provide any evidence in support of his contention that he did not receive proper notice. *See* 8 C.F.R. § 1003.23(b)(4)(ii).

We are without jurisdiction to review Singh's arguments regarding his eligibility for asylum because this issue has never been adjudicated. *See Barron v. Ashcroft*, 358 F.3d 674, 678 (9th Cir. 2004) (explaining that exhaustion is jurisdictional).

**PETITION FOR REVIEW DENIED in part, DISMISSED in part.**